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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/581,315	06/02/2006	Ilkka Limma	ESP.1488	3857

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EXAMINER
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JANG, CHRISTIAN YONGKYUN

ART UNIT	PAPER NUMBER
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3735

NOTIFICATION DATE	DELIVERY MODE
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03/21/2011

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ptomail@gziplaw.com  
gziplaw@gmail.com

## Office Action Summary

Application No.

10/581,315

Applicant(s)

LIMMA ET AL.

Examiner

CHRISTIAN JANG

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 14 December 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 37-60 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 37-60 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>12/14/10</u>  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. This Office Action is responsive to amendments filed on 12/28/10.

#### ***Information Disclosure Statement***

2. IDS submitted on 12/14/10 has been considered.

#### ***Claim Rejections - 35 USC § 101***

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 37-48 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Method claims must meet a specialized, limited meaning to qualify as a patent-eligible process claim. The test for a method claim is to whether the claimed method is tied to a particular machine or apparatus or transforms a particular article to a different state or thing. The machine or transformation must impose meaningful limits on the method claim's scope to pass the test. This means reciting a specific machine or a particular transformation of a specific article in an insignificant step is not sufficient to pass the test. It is noted that a measurement device for data gathering is an ancillary device that is incorporated into non-significant steps. Applicant is advised to incorporate, for example, feedback means in the providing step.

#### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent

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granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 37, 38, 40, 42-49, 51, and 53-60 are rejected under 35 U.S.C. 102(e) as being anticipated by Lee et al. (US 2005/0288154).

7. As to claims 37 and 49, Lee teaches a method and corresponding device for comparing a previously recorded activity to an ongoing activity ([0051], [0052] - tracking performance characteristics to compare current values with previous values) using a measurement device (10) by performing the steps of loading previously recorded measurement data of a virtual friend relating to a previous activity (claims 15 and 16 - the "performance profile" of claim 1 being the measurement data of a virtual friend), the data comprising a plurality of consecutive measurement points (Fig. 6 - 220, [0053] - information relating to speed, distance, time for certain intervals or entire session) on a route ([0064] - device allows for storing locations to be able to store a starting/finishing locations and allow the user to navigate back to the same location to train along the same route, [0007] - talks of the difficulty of recalling exact route in prior arts, which this invention solves), comparing, during an ongoing activity, the measurement data with current measurements (250, [0055] - comparing goal information with performance information), providing a user with a feedback in response (260, [0055] - communicating performance info versus goal info) by continuously measuring the ongoing activity (230 - monitoring performance) and providing feedback at the same time (260, [0058] - instructing user to modify/maintain performance) and indicating how much the user has fallen behind with the previously recorded measurement ([0055] - communicating

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performance information versus goal information). Lee further teaches input means ([0013] - user interface or memory element data interface), data processing unit ([0013] - processor) and feedback means (80 - audio component, 58 - display).

8. As to claim 38, Lee teaches the data as the user's own previous measurement data or someone else's (claims 15 and 16).

9. As to claims 40 and 51, Lee teaches comparing corresponding measurement points ([0070] - in an example, Lee shows how a user training for a triathlon would set different intervals for three categories - swimming, bicycling, and running - so that the comparison could be done in these interval goals).

10. As to claims 42-44 and 53-55, Lee teaches a predetermined limit for providing user with feedback and providing feedback only when the limit is exceeded or gone under ([0058] - audio messages such as "you are fifty feet behind schedule" which can inherently only be provided when the user has crossed the limit of fifty feet).

11. As to claims 45 and 56, Lee teaches feedback via sound ([0058] - audio).

12. As to claims 46 and 57, Lee teaches feedback via display ([0058] - progress bars 150).

13. As to claims 47 and 58, Lee teaches that the display is integrated to the measurement device (Fig. 1 - 50).

14. As to claims 48 and 59, Lee teaches the display is an external device connected to the measurement device (Fig. 1 - 50 - displays are inherently external to allow for viewing by the user)

15. As to claim 60, Lee teaches that the device is hand-held ([0049]).

***Claim Rejections - 35 USC § 103***

16. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

17. Claims 39, 41, 50, and 52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee et al. (US 2005/0288154) over Kaufman (US 2003/0171189).

18. As to claims 39 and 50, Lee teaches that the measurement points include time-stamps ([0016]), GPS positions ([0014]), and altitude measurements ([0046]). Lee does not teach the monitoring of heart rate. Kaufman, in an exercise monitoring device wherein performances are monitored in real time and compared to goals/benchmarks and feedback given to motivate the user ([0002]) teaches that heart rate is monitored to motivate the user to keep the rate within a certain target range or to avoid a dangerous condition ([0068]). As such, it would have been obvious to modify Lee with Kaufman to monitor heart rate in addition to other exercise parameters to monitor progress in additional parameters.

19. As to claims 41 and 52, Lee teaches the comparison of elapsed time, speed, and distance ([0045]). Lee does not teach the comparison of heart rate. Kaufman, in an exercise monitoring device wherein performances are monitored in real time and compared to goals/benchmarks and feedback given to motivate the user ([0002]) teaches that heart rate is monitored to motivate the user to keep the rate within a certain target range or to avoid a dangerous condition ([0068]). As such, it would have been

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obvious to modify Lee with Kaufman to monitor heart rate in addition to other exercise parameters to monitor progress in additional parameters.

### ***Response to Arguments***

20. Applicant's arguments with respect to claims 37 and 49 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

21. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTIAN JANG whose telephone number is (571)270-3820. The examiner can normally be reached on Mon-Thurs (10-9:30).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor can be reached on 571-272-4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Patricia C. Mallari/  
Primary Examiner, Art Unit 3735

CJ  
/C. J./  
Examiner, Art Unit 3735  
3/11/11